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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

OSCAR GOMEZ GARCIA,

Defendant and Appellant.

D073407

(Super. Ct. No. SCD268067)

APPEAL from a judgment of the Superior Court of San Diego County, Charles G. Rogers, Judge. Affirmed.

Moreno & Associates and William J. Baker, for Plaintiff and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland and Scott C. Taylor, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found Oscar Gomez Garcia guilty of 27 separate counts involving sexual molestation of his daughter, Jane Doe, over the course of approximately 12 years, starting when Jane Doe was four years old. The trial court sentenced Garcia to an indeterminate

prison term of 175 years to life, and a consecutive determinate prison term of 110 years, eight months.

Garcia contends (1) the People's two-year delay in filing a criminal complaint against him prejudicially violated his right to due process; (2) the trial court abused its discretion by admitting evidence of Garcia's molestation of his older daughter, C.; (3) insufficient evidence supports his conviction on any of the counts; and (4) we should conduct a review of Jane Doe's medical records subpoenaed by Garcia from a medical clinic to insure that the trial court properly determined that they did not contain any relevant information that should be disclosed to Garcia.

We have reviewed Jane Doe's medical records and have confirmed that they do not contain any relevant evidence. We further find no merit to Garcia's remaining arguments. Accordingly, we affirm the judgment.

## I.

### FACTUAL AND PROCEDURAL BACKGROUND

According to Jane Doe's testimony, when she was four years old, Garcia started sexually molesting her by touching her vagina with his hand and inserting his penis into her vagina. In another incident when she was four or five years old, Jane Doe was standing on top of a ladder wearing a dress, and Garcia put his fingers in her vagina. The molestation continued over the course of the next 11 years. Approximately two nights a week, while Jane Doe's mother was at work, Garcia would insert his penis in Jane Doe's vagina or anus, put his mouth on her vagina, and force her to touch his penis with her hand. Garcia would also often grope Jane Doe's breasts and buttocks as she walked by

him inside the house. As Jane Doe got older, Garcia increasingly used threats to make her comply and to keep the molestation a secret, and Garcia also made video recordings of Jane Doe wearing lingerie. The molestation stopped shortly before Jane Doe disclosed it to a teacher and then to her mother when she was 16 years old in May 2014. Jane Doe spoke with police about Garcia's molestation of her in early June 2014.

On July 29, 2016, the People filed a complaint against Garcia, charging him with 27 counts of sexual crimes against Jane Doe, spanning from 2002 to 2013. After a preliminary hearing was held, a December 27, 2016 information charged Garcia with 27 counts based on the same alleged conduct. The charges were as follows: continuous sexual abuse of a child (Pen. Code, § 288.5, subd. (a);<sup>1</sup> count 1); aggravated sexual assault of a child, sodomy (§ 269; count 2); forcible lewd act on a child, sodomy (§ 288, subd. (b)(1); counts 3 and 12); lewd act on a child, sodomy (§ 288, subd. (a); count 4); sexual intercourse with a child 10 years old or younger (§ 288.7, subd. (a); counts 5 and 8); sodomy of a child 10 years old or younger (§ 288.7, subd. (a); counts 6 and 9); oral copulation with a child 10 years old or younger (§ 288.7, subd. (b); counts 7 and 10); forcible lewd act with a child, intercourse (§ 288, subd. (b)(1); counts 11, 15 and 18); forcible lewd act with a child, oral copulation (§ 288, subd. (b)(1); count 13); aggravated sexual assault of a child, rape (§ 269, subd. (a); counts 14 and 17); lewd act upon a child, intercourse (§ 288, subd. (a); counts 16 and 19); forcible rape (§ 261, subd. (a)(2); counts 20 and 24); sodomy by use of force (§ 286, subd. (c)(2)(A); counts 21 and 25);

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<sup>1</sup> Unless otherwise indicated, all further statutory references are to the Penal Code.

lewd act upon a child 14 or 15 years of age, intercourse (§ 288, subd. (c)(1); counts 22 and 26); and lewd act upon a child 14 or 15 years of age, sodomy (§ 288, subd. (c)(1); counts 23 and 27). The information also alleged as to counts 1, 4, and 19 that Garcia had substantial sexual conduct with the victim (§ 1203.066, subd. (a)(8)).

At trial, in addition to Jane Doe's testimony, the jury heard testimony from Garcia's older daughter, C., who was 31 years old at the time. C. testified about four separate incidents involving Garcia when she was four or five years old. In the first incident, she was bending over to look at a toy train, when Garcia touched her "behind" with his hands. In the second incident, she and Garcia were nude in the bedroom, and he put his penis in her mouth, with his hand behind her head. In the third incident, she and Garcia were nude on the couch, and he was watching pornography with her. In the fourth incident, Garcia gave her a hickey on her neck. C.'s mother also testified at trial. She described discovering a hickey on C.'s neck when C. was five years old. C. told her mother that Garcia gave her the hickey. C.'s mother immediately divorced Garcia and moved out of the area. Neither C. nor her mother saw Garcia again until the proceedings in this case.

The jury found Garcia guilty on all counts. The trial court sentenced Garcia to prison for an indeterminate term of 175 years to life, and a consecutive determinate term of 110 years, eight months.

## II.

### DISCUSSION

#### A. *Garcia Did Not Establish a Violation of His Right to Due Process Due to the People's Two-Year Delay in Charging Him*

We first consider Garcia's contention that the People's delay in charging him in this action violated his right to due process under the federal and state constitutions.

##### 1. *Background*

Jane Doe first disclosed the molestation to police in early June 2014. The People arrested and charged Garcia two years later in July 2016.

Several months prior to trial, Garcia filed a motion to dismiss the case based on the prejudice he allegedly incurred due the People's delay in charging him. In support of the motion, Garcia's February 23, 2017 declaration stated that Garcia was involved in a work-related accident in August 2015, approximately a year before his arrest, which continued to cause him to suffer from agonizing shoulder and back pain, headaches, dizziness and memory problems. According to Garcia, his pain and memory problems were making it impossible for him to assist his attorney in preparing a defense, in that he could not "even remember names, dates, and places."<sup>2</sup> Without giving any specific examples, Garcia also generally stated that due to the passage of time associated with the two-year delay in filing charges against him, the memory of witnesses had faded and "neighbors, relatives, and other witnesses have moved away" and he "cannot find them."

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<sup>2</sup> Based on this same factual predicate, counsel expressed a doubt as to Garcia's mental competence on February 24, 2017, and proceedings were suspended. Garcia was found competent on May 24, 2017.

In his memorandum of points and authorities in support of the motion to dismiss, Garcia addressed his 2015 work-related injury as follows: "Remember, defendant must re-construct the years 2002-2013 to defend against the charges. The problem is he cannot remember the events of 2002 to 2013. If the District Attorney had filed a complaint in 2014 this problem would not exist." The memorandum also asserted, without giving any specific examples, that "the delay in reporting the alleged crimes and filing a complaint has naturally led to the loss of witnesses and fading memories of the current witnesses." According to the memorandum, "important evidence has *probably* disappeared because of the passage of so many years. . . . Defendant needs to gather the alleged victim[']s medical, school and [Child Protective Services] records from 2002-2013. It is *unlikely* that many of these records even exist anymore." (Italics added.)

The People's opposition pointed out, among other things, that a competency hearing was held in May 2017, at which a doctor testified that Garcia was likely " 'malingering' " about his claim to have suffered a brain injury from the work-related accident.

On June 26, 2017, the trial court denied the motion to dismiss for preaccusation delay, finding that any prejudice was speculative. Among other things, the trial court stated that the doctor at the competency hearing "opined that the defendant was malingering with regard to cognitive deficiencies," so that Garcia had not established that he was actually suffering from memory problems as a result of his August 2015 work-related accident.

## 2. *Applicable Legal Standards*

" 'A defendant's state and federal constitutional speedy trial rights (U.S. Const., 6th Amend.; Cal. Const., art. I, § 15, cl. 1) do not attach before the defendant is arrested or a charging document has been filed.' . . . Nonetheless, a defendant is not without recourse if a delay in filing charges is prejudicial and unjustified. The statute of limitations is usually considered the primary guarantee against overly stale criminal charges . . . , but the right of due process provides additional protection, safeguarding a criminal defendant's interest in fair adjudication by preventing unjustified delays that weaken the defense through the dimming of memories, the death or disappearance of witnesses, and the loss or destruction of material physical evidence . . . . [¶] 'A defendant seeking relief for undue delay in filing charges must first demonstrate resulting prejudice, such as by showing the loss of a material witness or other missing evidence, or fading memory caused by the lapse of time. . . . Prejudice to a defendant from precharging delay is not presumed. . . . If the defendant establishes prejudice, the prosecution may offer justification for the delay; the court considering a motion to dismiss then balances the harm to the defendant against the justification for the delay. . . . But if the defendant fails to meet his or her burden of showing prejudice, there is no need to determine whether the delay was justified.' " (*People v. Jones* (2013) 57 Cal.4th 899, 921 (*Jones*), citations omitted.)<sup>3</sup> Put simply, when the defendant does "not meet his initial burden of

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<sup>3</sup> As our Supreme Court has explained, in evaluating a claim that a defendant's due process rights were violated due to preaccusation delay, " '[b]ecause the law under the California Constitution is at least as favorable to defendant as federal law, we apply California law to defendant's claim.' " (*Jones, supra*, 57 Cal.4th at pp. 921-922.) "Under the California standard, 'negligent, as well as purposeful, delay in bringing charges may,

showing prejudice resulting from the precharging delay" the prosecution is "not required to show justification for the delay, and the court ha[s] no obligation to balance the harm from the delay against the justification." (*People v. Abel* (2012) 53 Cal.4th 891, 910-911 (*Abel*).) "[T]he defendant seeking dismissal must affirmatively demonstrate prejudice." (*People v. Martinez* (2000) 22 Cal.4th 750, 767.)

" 'We review for abuse of discretion a trial court's ruling on a motion to dismiss for prejudicial prearrest delay [citation], and defer to any underlying factual findings if substantial evidence supports them [citation].' " (*Jones, supra*, 57 Cal.4th at p. 922.)

### 3. *The Trial Court Did Not Abuse Its Discretion*

Here, the trial court concluded that Garcia did not meet his initial burden to establish prejudice resulting from the People's two-year delay in charging him after Jane Doe first disclosed the molestation to police. The trial court therefore did not consider whether the People had any justifiable reason for the delay.

Garcia presented two bases for his claim of prejudice: (1) he suffered a work-related injury before the People charged him in this case, which caused him to incur memory loss; and (2) witnesses and items of evidence were unavailable because of the passage of time. As we will explain, the trial court was well within discretion to conclude that Garcia did not establish prejudice due to delay on either ground.

First, the trial court reasonably rejected Garcia's claim that the People's delay in filing charges was prejudicial because Garcia suffered a workplace injury in the interim,

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when accompanied by a showing of prejudice, violate due process. This does not mean, however, that whether the delay was purposeful or negligent is irrelevant.' " (*People v. Cowan* (2010) 50 Cal.4th 401, 431.)



which caused memory loss. Garcia's claim failed because he did not establish that the passage of time due to the People's delay in filing a criminal complaint is what *caused* him to lose his memory. A defendant seeking relief for undue delay in filing charges may demonstrate " 'resulting prejudice . . . such as by showing . . . fading memory *caused by the lapse of time.*' " (*Jones, supra*, 57 Cal.4th at p. 921, italics added.) Here, it was not *the lapse of time*, but rather an unexpected accident at work, that caused the memory loss that Garcia claims. Moreover, the trial court also reasonably found that Garcia had not established, as a factual matter, that he was actually suffering from any memory loss due to the work-related accident that would adversely affect his right to defend himself. Garcia's declaration, signed in February 2017, stated that he was unable to assist in his defense because he was not able to remember "names, dates and places" due to his work-place injury. However, subsequently, in May 2017, the trial court held a hearing on Garcia's mental competency at which it found that Garcia was able to assist in his defense despite his claim to have memory problems. As the trial court observed, the doctor at the mental competency hearing opined that Garcia was malingering regarding his memory problems. Garcia has not pointed to any medical opinion to the contrary. The trial court was accordingly entitled to discredit Garcia's unsupported claim about his memory loss and to conclude that Garcia had not met his burden to establish prejudice. (*Serna v. Superior Court* (1985) 40 Cal.3d 239, 250 (*Serna*) [a court may disbelieve "a defendant's declaration or testimony that he has no recall of events occurring many months earlier"].)

Second, Garcia's claim that witnesses and items of evidence were unavailable because of the People's delay is too speculative and vague to satisfy Garcia's initial

burden to establish prejudice. When defendant seeks a dismissal based on preaccusation delay, " '[t]he showing of actual prejudice which the law requires must be supported by particular facts and not . . . by bare conclusionary statements.' " (*Serna, supra*, 40 Cal.3d at p. 250.) "Mere speculation" that favorable evidence would have been available earlier is not sufficient to carry a defendant's burden to show actual prejudice. (*Abel, supra*, 53 Cal.4th at p. 909 [the defendant's claim of prejudice was based on "mere speculation" when he "made no showing that [a witness's] recall would have been more specific had she been contacted earlier, or that she could or would have provided documentary evidence to support his claim"].) Garcia has made no attempt to identify specific witnesses or items of evidence that became unavailable due to the passage of time. Instead, the only relevant statement in Garcia's declaration is the following vague claim: "The passage of time has caused witness memories to fade. . . . Neighbors, relatives, and other witnesses have moved away. I cannot find them." Garcia's argument in his appellate brief is similarly vague, and he uses words that establish the prejudice he claims is speculative. The entirety of Garcia's relevant argument is as follows: "Potential witnesses *may have* moved away. If [Garcia] had been arrested in June 2014 after [Jane Doe] made the accusation, he could have tracked down and spoken to her fellow students, teachers, counselors, and others. Two years later everyone had moved on and *would not have* remembered details and events during the periods of time [Jane Doe] claims she was being raped and abused." (Italics added.) Garcia's conclusory and speculative argument shows that he is unable to meet his burden to show prejudice by pointing to " 'particular facts' " rather than by making " 'bare conclusionary statements.' " (*Serna*, at p. 250.)

In sum, we conclude that because Garcia did not establish any specific and non-speculative prejudice due to the People's two-year delay in charging him, the trial court was well within its discretion to deny Garcia's motion to dismiss.

B. *The Trial Court Did Not Abuse Its Discretion in Admitting Evidence of Garcia's Molestation of his Older Daughter, C.*

Garcia contends that the trial court erred in admitting evidence that he molested his older daughter, C. Specifically, Garcia contends that the trial court should have concluded that the evidence was required to be excluded pursuant to Evidence Code section 352.

During motions in limine, the People moved to introduce evidence of Garcia's molestation of C. at trial. The trial court concluded that the evidence was admissible pursuant to Evidence Code section 1108, which provides, "In a criminal action in which the defendant is accused of a sexual offense, evidence of the defendant's commission of another sexual offense or offenses is not made inadmissible by Section 1101, if the evidence is not inadmissible pursuant to Section 352." (Evid. Code, § 1108, subd. (a).) Over Garcia's objection, the trial court also specifically concluded that the evidence was not required to be excluded pursuant to Evidence Code section 352 because it would not be unduly time consuming and the probative value of the testimony would outweigh any prejudice.<sup>4</sup>

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<sup>4</sup> Although Garcia's appellate argument is not well developed, he appears to argue that Evidence Code section 1108 is unconstitutional. We reject the argument. In *Falsetta* our Supreme Court established that Evidence Code section 1108 is constitutional and does not violate a defendant's due process rights because of the procedural

According to Garcia, the trial court abused its discretion in determining that Evidence Code section 352 did not require exclusion of the evidence. Pursuant to Evidence Code section 352, "[a] trial court may exclude otherwise relevant evidence when its probative value is substantially outweighed by concerns of undue prejudice, confusion, or consumption of time." (*People v. Scott* (2011) 52 Cal.4th 452, 490 (*Scott*).) "Rulings regarding . . . Evidence Code section 352 are reviewed under an abuse of discretion standard." (*People v. Lee* (2011) 51 Cal.4th 620, 643.)

"The weighing process under Evidence Code section 352 'depends upon the trial court's consideration of the unique facts and issues of each case, rather than upon the mechanical application of automatic rules.' " (*People v. Miramontes* (2010) 189 Cal.App.4th 1085, 1097.) When considering whether to exclude evidence of another sexual offense under Evidence Code section 352, "trial judges must consider such factors as its nature, relevance, and possible remoteness, the degree of certainty of its commission and the likelihood of confusing, misleading, or distracting the jurors from their main inquiry, its similarity to the charged offense, its likely prejudicial impact on the jurors, the burden on the defendant in defending against the uncharged offense, and the availability of less prejudicial alternatives to its outright admission, such as admitting

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safeguards built into Evidence Code section 1108. (*People v. Falsetta* (1999) 21 Cal.4th 903, 915 (*Falsetta*).) These safeguards include (1) that the defendant receive "pretrial notice of the offenses sought to be proved, assuring that the defendant will not be surprised or unprepared to rebut the proposed evidence" (*id.* at p. 916, italics omitted); and (2) that the trial court assess undue prejudice under Evidence Code section 352, which includes an inquiry into "its likely prejudicial impact on the jurors, [and] the burden on the defendant in defending against the uncharged offense." (*Falsetta*, at p. 917.)

some but not all of the defendant's other sex offenses, or excluding irrelevant though inflammatory details surrounding the offense." (*Falsetta, supra*, 21 Cal.4th at p. 917.) "[T]he probative value of 'other crimes' evidence is increased by the relative similarity between the charged and uncharged offenses, the close proximity in time of the offenses, and the independent sources of evidence (the victims) in each offense." (*Ibid.*) Further, in evaluating whether to admit evidence of other sexual offenses, the court should consider " 'whether "[t]he testimony describing defendant's uncharged acts . . . was no stronger and no more inflammatory than the testimony concerning the charged offenses." ' " (*Miramontes*, at p. 1097.) " ' "The 'prejudice' referred to in Evidence Code section 352 applies to evidence which uniquely tends to evoke an emotional bias against the defendant as an individual and which has very little effect on the issues. In applying section 352, 'prejudicial' is not synonymous with 'damaging.' " ' " (*Scott, supra*, 52 Cal.4th at p. 491.)

Garcia's main contention is that the evidence that he molested C. should have been excluded as unduly prejudicial because it was "inflammatory" in that "[o]ne can hardly conceive of an allegation more horrific, heinous, and hateful" than "a father forcing his female toddler daughter to perform oral sex upon him." We reject the argument. Because the conduct with C. happened only during a short period of time, and did not involve sexual or anal penetration, or any threats by Garcia, it was not as egregious as the allegations in this case. As the trial court observed, the evidence of Garcia's molestation of C. was "far less egregious" than the charges in this case. Although we agree with Garcia that there are few things more horrific than a father forcing his young daughter to

perform oral sex, this case presents a circumstance where the crimes charged are *even more horrific* because they involve a father's rape of his daughter for over a decade beginning when she was four years old.

Garcia also contends that it was unfair to admit evidence of his molestation of C. because it occurred so long ago that he was unable to locate evidence to defend against the allegation, and because he was not prosecuted for any molestation of C. We understand Garcia's argument, but we conclude that the trial court was within its discretion to conclude that the evidence of Garcia's molestation of C. was not too unreliable or remote to require that it be excluded. Crucially, C.'s testimony that Garcia molested her did not stand alone without corroboration. Specifically, C.'s mother also testified about her discovery of the molestation when she found a hickey on C.'s neck and C. told her that she received it from Garcia. Moreover, C.'s testimony about the molestation was specific and detailed, lending credibility to the allegation, even though it was remote in time. The evidence of Garcia's molestation of C. was also credible because it came from a source completely independent of Jane Doe. Indeed, Jane Doe and C. did not even know of each other's existence until the proceedings in this case.

Finally, Garcia contends that the evidence of his molestation of C. should have been excluded because its "probative value . . . was negligible or nil." Garcia argues that C.'s allegations were "wholly different" from Jane Doe's allegations because Jane Doe "told of over a decade of almost nightly rape and other sexual abuse," while, in contrast, C. "told of one incident of oral sex and one purported groping." Garcia argues that "[o]ne has nothing to do with the other." We disagree. "[T]he probative value of 'other crimes'

evidence is increased by the relative similarity between the charged and uncharged offenses." (*Falsetta, supra*, 21 Cal.4th at p. 917.) Here, Garcia's molestation of C. and his molestation of Jane Doe share crucial similarities. Most specifically, both victims are Garcia's biological daughters, and the molestation of both victims began when the victims were four years old. (*People v. Branch* (2001) 91 Cal.App.4th 274, 284-285 [where the defendant was charged with molesting his 12-year-old step-great-granddaughter, evidence that he molested his 12-year-old stepdaughter 30 years earlier was admissible because of "significant similarities between the prior and the charged offenses"].) As the trial court reasonably observed, Garcia's conduct toward both victims was "quite similar," supporting an inference that Garcia "has a trait of sexual attraction to children, particularly his own children." The fact that the molestation of C. did not progress to intercourse and occurred for only a short period of time does not make the molestation of C. too dissimilar from the molestation of Jane Doe to have any probative value. Indeed, the jury could reasonably conclude that the only reason that Garcia's molestation of C. did not progress to more serious lewd acts or last for a longer period of time was because C.'s mother prevented Garcia from having any further contact with C. Accordingly, the trial court was well within its discretion to conclude that the evidence that Garcia molested C. was highly probative in this case because it showed his propensity to commit sexual acts against a young biological daughter.

In sum, the trial court did not abuse its discretion by concluding that evidence of Garcia's molestation of C. under Evidence Code section 1108 should not be excluded pursuant to Evidence Code section 352.

C. *Sufficient Evidence Supports the Verdict*

Garcia presents a brief and undeveloped argument challenging the sufficiency of the evidence to support the verdict in each of the 27 counts.

In considering a challenge to the sufficiency of the evidence, "we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. . . . We presume every fact in support of the judgment the trier of fact could have reasonably deduced from the evidence. . . . If the circumstances reasonably justify the trier of fact's findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. . . . 'A reviewing court neither reweighs evidence nor reevaluates a witness's credibility.' " (*People v. Albillar* (2010) 51 Cal.4th 47, 60, citations omitted.)

Garcia first argues that the evidence was insufficient to support the verdict because Jane Doe's testimony was "incredible and preposterous" in that she did not disclose the molestation to anyone over the course of many years. We conclude that Garcia's challenge to the sufficiency of the evidence lacks merit because it amounts to a request that we reweigh the evidence and reassess the jury's credibility determination regarding Jane Doe's testimony. "[I]t is the exclusive province of the . . . jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence.' " (*People v. Letner and Tobin* (2010) 50 Cal.4th 99, 162.)



Based on the guilty verdict, the jury evidently found Jane Doe's testimony to be truthful. We may not second guess that determination. "[T]he testimony of a single witness is sufficient to support a conviction," unless such testimony describes facts or events "that are physically impossible or inherently improbable." (*People v. Elliott* (2012) 53 Cal.4th 535, 585 (*Elliott*).) Here, there is nothing impossible or inherently improbable about the acts that Jane Doe described in her testimony. Therefore, based on Jane Doe's testimony, which detailed Garcia's molestation of her, the record contains substantial evidence to support the verdict on each of the 27 counts.

Garcia also contends that insufficient evidence supports the verdict because "[t]here was no physical evidence" of the molestation and "no witnesses who saw actual or even suspected sexual abuse." This argument fails because physical evidence is not necessary for a conviction, and a conviction may be based on testimony of the victim alone. (*People v. Gammage* (1992) 2 Cal.4th 693, 700 [" 'In California conviction of a sex crime may be sustained upon the uncorroborated testimony of the prosecutrix' "].) Further, substantial evidence supports the conviction even without other witnesses to the molestation, as Jane Doe's testimony alone provides sufficient evidence. (*Elliott, supra*, 53 Cal.4th at p. 585.)

D. *The Trial Court Properly Determined That Jane Doe's Subpoenaed Medical Records Did Not Contain Relevant Information*

During in limine motions, the trial court conducted an in camera review of certain medical records for Jane Doe that Garcia had subpoenaed from a family health clinic where Jane Doe received care as a child. The trial court found that there was "nothing

disclosable in these records" because there was "nothing that would reflect on any issue or any fact that might be pertinent to this case." Garcia requests that we conduct our own review of the records to determine whether the trial court erred in ruling that the records contained no discoverable information. He states that "[i]t is highly improbable that nothing in the records was relevant."

When a trial court conducts an in camera review of privileged documents to determine if they are relevant and should be turned over to the defendant, our function on appeal "is to review the confidential records . . . , in order to determine whether they were material and should have been disclosed." (*People v. Martinez* (2009) 47 Cal.4th 399, 453.)

We have reviewed the 21 pages of records provided by the health clinic, and based on that review, we conclude that they contain no evidence that is in any way relevant to Garcia's defense. Accordingly, the trial court properly declined to turn over the medical records to Garcia.

DISPOSITION

The judgment is affirmed.

IRION, J.

WE CONCUR:

McCONNELL, P. J.

DATO, J.